No. 14693

In The
United States
Circuit Court of Appeals
For The Ninth Circuit

MAY W. BENTLEY, RAYMOND L. RUSNAK and JOSEPH HOMAN,

Appellants,

vs.

ROSEBUD COUNTY, MONTANA a body corporate,

Appellee.

Upon Appeal from the District Court of the United States for the District of Montana.

Brief of Appellee

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MILES CITY ★

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BRIEF OF APPELLEE

STATEMENT OF THE CASE

The plaintiffs-appellants (hereinafter referred to as plaintiffs), in their statement of the case fail to point out that the compromise between the plaintiffs and all of the defendants, except Rosebud County, resulted in a dismissal of plaintiff's complaint **with prejudice.** Further, the ownership of the 6¼% royalty interest depends not upon the validity of the tax deed proceedings undertaken by Rosebud County, Montana, but rather upon the validity of plaintiff's claim to title to the land—at least to the minerals.

ARGUMENT

Plaintiffs open their argument with the statement that "there is no dispute in the record regarding plaintiffs' title and ownership of the 6¼% royalty interest up to the time of the tax deed proceedings by Rosebud County, Montana". This raises an interesting question at the outset, when we note that in Montana a royalty interest comprises no part of the fee; that is, it is merely an interest in the production from the land which attaches only upon the severance. It is not an interest in the land, but rather personal property, or, more aptly, a right to receive a certain percentage of the personal property if and when produced.

Rist v. Toole County, et al, (1945),
117 Mont. 426, 159 P. 2d 340;
Mitchell, et al, v. Hannah, et al, (1949),
123 Mont. 152, 208 P. 2d 812.

It would appear then that this entire question as to the ownership of the 6¼% royalty, so far as the plaintiffs are concerned, has become moot. Certainly, the validity of the 6¼% reservation in Rosebud County depends entirely upon title of the minerals in their grantees, Grebe and King. This paramount title having been recognized by the plaintiffs in the defendants, Grebe and King, necessarily recognizes the 6¼% royalty in the County. This is true when we note that plaintiffs' complaint was

dismissed with prejudice; that is, the defendants, Grebe and King, bought their peace and in nowise can it be said that they acquired any title from the plaintiffs. This being true, and from the very nature of a royalty being a right in the personality, that is, production from the land, plaintiffs' claim to the County's royalty cannot be sustained. In other words, the defendants, Grebe and King and the County, stand or fall together, so long as neither recognizes plaintiff's claim to title.

However, we need not stand on this proposition alone, for the tax title proceedings, whereby Rosebud County acquired fee simple title to this land, were and are valid and the former suit to quiet title is an effective bar to plaintiff's claim.

VALIDITY OF TAX TITLE PROCEEDINGS

A.

The Affidavit

Plaintiffs contend that the tax title proceedings are defective for two reasons; that is, that the affidavit and proof of service is insufficient, in that it does not state when the notice was mailed to May W. Bentley, and further, that the county treasurer's certificate of tax sale does not contain a sufficient description of the real property involved. Their contention that the affidavit is insufficient is based primarily on the doctrine enunciated in

Perry v. Maves

125 Mont. 215, 233 P. 2d 820.

It is submitted that this case is no authority whatever for counsel's contention in the instant case.

In the **Maves** case the **only** paper filed in the treasurer's office was a so-called affidavit and proof of service, which merely recited that the clerk,

> " '. . . filed in the office of the County Clerk and Recorder of McCone County, Montana, an Affidavit and Proof showing the manner in which said Notice of Application for Tax Deed was given, all as provided by the laws of the State of Montana, to which Affidavit and accompanying proofs you are hereby referred.' "

The affidavit here is easily distinguished from the one the court was there dealing with. In this case the affidavit and proof of service filed with the treasurer specifically recites, among other things, that the clerk,

> " . . . served a copy of the **attached** notice upon May W. Bentley by depositing in the Post Office at Forsyth, Montana, an envelope containing a copy of said Notice, securely sealed, with postage both regular and for registration thereon, and marked 'Return Receipt Requested', said envelope being addressed as follows: May W. Bentley, Madison, Wis., . . ." (Emphasis supplied)

This statement alone is sufficient to warrant the issuance of a tax deed. In

Milne v. Leiphart,
119 Mont. 263, 174 P. 2d 805,
at pages 808-809,

the court in passing on such an affidavit said:

> "An affidavit was filed by the county clerk in the county treasurer's office showing that he deposited in the United States post office at Conrad an envelope containing a copy of the notice, by registered mail, postage prepaid, addressed to Harvey Leiphart, E. 724 Walton, Spokane, Washington. **That was sufficient proof to justify the county treasurer in issuing the tax deed."** (Emphasis supplied)

This decision conclusively establishes the validity of the tax deed in this case. It is to be noted that in that case the court was dealing with an affidavit similar to the one in this case, and, therefore, is direct authority for the sufficiency of the tax deed issued by reason thereof, whereas in the **Maves** case the court was there dealing with an affidavit entirely distinct and different from the one of this case and the **Leiphart** case.

Furthermore, in this case we have the additional fact that the affidavit filed with the treasurer also had attached thereto a copy of the notice that was served upon May W. Bentley. This notice, dated

October 13, 1942, specifically recites that at least 60 days will have expired after the service of this notice upon the defendant, setting forth the default day as being January 15, 1943, at which time the clerk would apply to the treasurer for a deed. This application or request for deed is dated January 15, 1943. The tax deed was issued on the same date. Also, the request for deed, which the affidavit and notice accompanied, specifically stated that more than 60 days **had elapsed** since the giving of the notice of application for tax deed.

Clearly then, upon the authority of **Milne v. Leiphart,** supra, 119 Mont. 263, 174 P. 2d 805, and as appears from the documents filed with the treasurer **without** reference to any other document dehors the record, it appears without question that the treasurer had jurisdiction to issue the tax deed.

Perry v. Maves,
125 Mont. 215, at page 218,
and cases therein cited.

To give the construction to the rule enunciated in **Perry v. Maves,** supra, that plaintiffs contend for would be not only disregarding the rule as stated in **Milne v. Leiphart,** supra, but also would in effect strike from our statute that portion of **Section 2209, Revised Codes of Montana, 1935,** which provides in part as follows:

" In all cases due proof of service of notice in

whatever manner given, supported by the affidavit required by law, must be filed immediately with the **clerk and recorder** of the county in which the property is situated, and be kept as a permanent file in his office, and such proof of notice when so filed **shall be prima facie evidence of the sufficiency of the notice.**" (Emphasis supplied)

As pointed out by Judge Pray in his decision in this case, the above quoted section only requires that due proof of service of notice be filed with the county clerk, and does not require due proof of service to be filed in the office of the county treasurer; that all that is required is the filing of "an affidavit showing that the notice hereinbefore required to be given has been given as herein required". The affidavit in this case meets these requirements. **Milne v. Leiphart,** supra. Furthermore, the plaintiffs make no contention whatsoever that the 60 day notice was not given, nor that the affidavit, notice of application for tax deed or the request for tax deed filed in the county treasurer's office were false.

Although we believe the foregoing definitely establishes the validity of the tax title proceedings in this case, we seriously question the necessity of the affidavit being filed with the treasurer in this case in any event, and this, in spite of the fact that it is incomprehensible to the plaintiffs. It is to be noted

that **Section 2209.1, Revised Codes of Montana, 1935,** requires, in taking of tax deeds by counties,

> "Whenever a county, city or town has become or hereafter becomes the purchaser of property sold for delinquent taxes, and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners . . . at any time thereafter deemed proper may order and direct the county clerk . . . to apply to the county . . . treasurer . . . for the issuance to the county . . . of a tax deed for such property, and it shall then be the duty of the county clerk . . . to give or post and cause to be published the proper notice of the application for such tax deed and to make the proper proof thereof, **all in the manner required by section 2209 . . .**" (Emphasis supplied)

This section last referred to requires only that due proof of service of notice supported by the affidavit required by law must be filed with the clerk and recorder of the county in which the property is situated, all of which was done in this case, as appears from those records on file in the county clerk and recorder's office, copies of which are stipulated to and marked "Exhibit D" herein.

This specific statute dealing specifically with the manner of taking of tax deeds by counties governs and controls this case over the general provisions of

of this state and of the United States. From this section the court takes judicial knowledge of the records of the land department of the United States, and by **Section 19-117, R.C.M. 1947,** must take judicial knowledge of the official map of Montana, which map contains the sections, townships and ranges, as shown by the records of the United States General Land Office survey.

What effect does this have on the description contained in the certificate of sale? To ask the question is but to answer it. It is rendered certain! For it is readily ascertainable from said map that not only is there but one Section 15-11-32 within Rosebud County, but that there is only one Section 15-11-32 within the entire State of Montana. Hence, this description, although incomplete, is not patently ambiguous, but is rendered certain from the deed itself in the light of the circumstances and not by any evidence aliunde.

Frizeen v. Swanton (Ore.)

34 P. 2d 939, at page 940.

Assuming for the sake of argument only that the description contained in the certificate of sale, being incomplete, is necessarily patently ambiguous, what is the effect in this case?

Plaintiffs have placed great reliance upon the case of,

Miller v. Murphy,

119 Mont. 393, 175 P. 2d 182,

but very carefully quoting from that case only that portion of it wherein the court speaks of the "tax proceedings". However, as plaintiffs mention, the particular tax proceedings that the court was there dealing with was the notice of application for tax deed. It was this **notice** that contained the defective description and **not,** as here, the certificate of sale. This is significant in view of the reasons given by our court for its requirement of certainty in the description, for as there stated:

> "Certainty in the description is required to apprise the owner that his property is advertised for sale, and to enable him to prevent the sale by the payment of the taxes thereon, and to impart information to bidders of the actual extent and location of the premises to be sold."

Here the land described in the **assessment, notice of application for tax deed** and the **tax deed itself,** all contained a complete unquestioned description, all of which imparted notice to May W. Bentley.

The certificate of sale in nowise apprises the owner that his property is advertised for sale, and, of course, in nowise imparts information to bidders of the property to be sold, for it is given after the sale. It becomes apparent then that **Miller v. Murphy,** supra, is no authority for the proposition contended for by plaintiffs, and this is especially true when we note:

> "That . . . in the year, 1935, the following describ-

ed property was duly and regularly assessed for taxes as required by law, to-wit: All of **Section 15, Township 11 North, Range 32 East, M.P.M., in Rosebud County Montana**; that said property was equalized as required by law and taxes were levied thereon in accordance with the law in said year 1935; that said taxes were not paid." (Emphasis supplied) (Paragraph 6, pages 2 and 3 of the Stipulation)

and that the notice of sale was properly given as provided by **Section 2182, Revised Codes of Montana, 1935.**

How then can plaintiffs assert that they have been deprived of any right or that the defective description in the certificate of tax sale, if defective, renders the tax deed void, for every record in this case which imparts notice to May W. Bentley contains the complete unquestioned description. These are: the assessment, the publication of notice as provided by **Section 2182,** which in turn refers to the assessment, the treasurer's book recording the tax sale, notice of application for tax deed, and the tax deed itself.

In addition to the foregoing, we think our court in **Miller v. Murphy,** supra, has recognized the distinction between mandatory and directory requirements contained in the sections of the code relating to tax proceedings. The rule is, as stated in

51 Am. Jur., Section 652

"While the statutes of most states provide in considerable detail how the work of assessing the taxes shall be performed, compliance with all these provisions in exact conformity to the law is not necessarily a condition precedent to a valid tax. The test is whether the provision is for the benefit and protection of the individual taxpayer or is merely for the orderly administration of public affairs. All those provisions which are intended for his security, for insuring an equality of taxation, and to enable one to know with reasonable certainty for what real and personal estate he is taxed, and for what all those who are liable with him are taxed, are conditions precedent which must be observed; otherwise, the assessment will be invalid. The provisions as to the form and mode of assessments, as to tax lists, and the place where the tax lists are to be deposited, are designed for the benefit of the taxpayers and the protection of their property from sacrifice, and are mandatory. Many regulations, however, are made by statute, designed for the information of the assessors and other officers, and intended to promote method, system, and uniformity in the modes of procedure, the compliance or noncompliance with which in no respect affects the rights of taxpaying citizens. Such provisions

may be considered directory merely, and non-compliance with them does not affect the validity of the tax. . . ."

Our legislature recognized that the provisions of the code relating to certificate of tax sale were not designed for the protection of the taxpayer but only for the orderly administration of public affairs in enacting **Section 84-4124, Revised Codes of Montana, 1947,** as amended and re-enacted by Section 1, Chapter 170, Laws of 1947, which provides in part:

"All certificates of sale heretofore issued to any county on the purchase by such county of real property sold at any delinquent tax sale and which certificates of sale are now held by such county, are hereby declared to be valid and subsisting certificates of sale for all purposes, notwithstanding any irregularities in the manner of publishing the delinquent tax list, or in holding such sale, or in selling such property **or in the issuance of such certificates of sale, or in the form thereof, provided the taxes for which such property was sold were taxes authorized by law to be assessed against such property, and were lawfully assessed against the same and have not been paid.**" (Emphasis supplied)

In view of this section, although we do not believe the tax sale certificate is irregular, any irregularity has been cured in view of the fact that the taxes for

which such property was sold were taxes authorized by law to be assessed against such property and were lawfully assessed and had not been paid, all of which appears from paragraph 6 of the stipulation herein.

We think the foregoing discussion conclusively establishes the validity of the tax proceedings in this case, but before leaving this question we wish to say a word about the Idaho case cited in plaintiff's brief,

Wilson v. Jarron (Ida.),
131 Pac. 12.

We submit that that case cannot be authority in this case, for the statutes there materially differ from the governing statutes here. This is readily apparent when we note that in Idaho, Sections 1763 and 1764 require that a tax deed contain the same description and recitals contained in the tax sale certificate. No such requirement is contained in the Montana codes.

In passing we think it is significant that in the Idaho case the court recognized that the assessor was justified in taking notice of the public surveys in that state. It is submitted that had the court there been dealing with a description as contained in the certificate of sale in this case, under the same circumstances, they would have found the description certain, for the assessor would have been justified in taking notice of the public surveys, which, in this

case, definitely establishes that there is but one Section 15-11-32 within the State of Montana, thus rendering the incomplete description certain.

In addition to the above facts, in this case we have the undisputed testimony of a qualified expert witness that the description "Section 15-11-32" could mean nothing but Section 15, T 11 N, R 32 E. (Tr. pp. 41-43)

In closing this part of the argument, we think it pertinent, in view of the length to which plaintiffs have gone in their endeavor to find defect in the tax title proceedings in this case, to point out what was said in our court in

Cullen v. Western Etc. Title Co.,

47 Mont. 513, at page 525,

134 Pac. 302

"... due process of law does not go to the length of requiring that tax proceedings 'be criticised with microscopic nicety' ..."

Indeed, plaintiffs in presenting the foregoing contentions have criticised these tax proceedings with microscopic nicety.

PLEA OF RES ADJUDICATA BY DECREE IN FORMER ACTION TO QUIET TITLE

A.

Question of Mutuality of Decree and Whether Parties Were Adversaries in Previous Action

Plaintiffs have apparently abandoned their position taken in their brief prepared for the trial court wherein they state:

> "The question at this point is very simple, and is simply a matter of whether or not proper and valid service was obtained upon May W. Bentley as a defendant in the action to quiet title. If due process was observed and May W. Bentley was properly served, the contention of the defendant, Rosebud County, would be correct. . . ."

by briefing in this court the additional proposition of the judgment not being mutual and the parties not being adversaries. These new contentions of plaintiffs are without merit for the following reasons: First, it is to be noted in Montana, an action to quiet title is one in rem, not in personam.

Heinecke v. Scott.
95 Mont. 200, 26 P. 2d 167.

Second, an action to quiet title is by its very nature one in which all the parties are adversary and is for the purpose of establishing title, as is said in

74 C.J.S., Sec. 105, page 160:

> "Decrees in suits to quiet title are intended to stand for all time as muniments of title."

Finally, as the Montana Supreme Court stated in

Brennan, et al, v. Jones, et al,
101 Mont. 550, at page 563,
55 P. 2d 697

plaintiffs at page 21 of their brief point out that this judgment in fact does bar Rosebud County and May W. Bentley.

Second: When are co-defendants or co-plaintiffs adversaries in the cause? The Supreme Court of Arizona in the case of

Ocean Accident & Guarantee Corporation v. United States Fidelity & Guaranty Co.,
162 P. 2nd 609,

has reviewed the authorities from all jurisdictions, and we shall briefly quote the decision:

> "Nor does it matter that the parties in the former controversy were not in form placed in adversary positions. If they were proper parties in the former cause and the questions raised in the later cause between them were or could have been fully asserted and maintained in the former suit, the former judgment is res judicata, and the issues may not again be relitigated. City of El Reno v. Cleveland-Trinidad Pav. Co., 25 Okl. 648, 107 P. 163, 27 L.R.A., N.S., 650, note page 651. A judgment under such circumstances conclusively determines as between the coparties, coplaintiffs or codefendants, issues which are raised and determined between them in the original action. Louis v. Trustees of

Brown Tp., 109 U.S. 162, 3 S. Ct. 92, 27 L. Ed. 892."

The Appellate Court of California, in the case of **Klinker v. Klinker,**

283 P. 2d 83, on page 87,

has analyzed the question of the doctrine of res adjudicata as a bar, and gives the rule as follows:

> "The application of the principle in a given case depends upon affirmative answers to the questions: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?"

Taking the issues in the present appeal, let us determine whether the question of res adjudicata comes under the rule as laid down in this case. The action was one to quiet title in which Grebe and King were plaintiffs and May W. Bentley and Rosebud County, among others, were defendants. The matter went to judgment and the court decided the issues involved; that is, that title to the lands was in Grebe and King. Rosebud County and May W. Bentley were both parties to that action and the matter went to final judgment. Compare that with the case now on appeal.

In this action May W. Bentley and her privies

are plaintiffs and Rosebud County, among others, is defendant. The question involved again is the title to the same land and the parties involved are the same parties. Therefore, the rule as laid down in the above case is fully met; that is, the issues are the same, the parties involved are the same, and the matter went to final judgment on the merits.

It becomes apparent then that this defense was properly pleaded by the County, for the rule is, as stated in

71 C.J.S., page 268:

> "A defense going to the merits of the whole case as showing no cause of action in the plaintiff may, when pleaded by one, inure to the benefit of all . . . "

That is another way of saying what has been clearly stated in many Montana cases, that the plaintiff must recover upon the strength of his own title and not on the weakness of the defendant's title. This rule is stated in

74 C.J.S., page 65,

that:

> "Where plaintiff is not in possession of the property, a defendant in an action to quiet title may effectually resist a decree against himself by showing simply that the plaintiff is without title. . . . "

Also see

Fastenau v. Engel, (Calif.)
270 P. 2d 1019.

The foregoing establishes that an action to quiet title bars any further questioning of that title between the same parties, as stated in

50 C.J.S., page 241:

"A judgment in an action to quiet title bars subsequent litigation on the same cause of action between the same parties or their privies, and is final and conclusive not only as to all issues actually involved and determined, but also as to such matters as should have been litigated and determined. **A judgment quieting title cuts off all claims or defenses of the losing party going to show title in himself, from whatever source derived, and which existed at the time of the suit, whether or not pleaded therein."** (Emphasis supplied)

Also see

Dern v. Tanner,
96 F. 2d 401; Certiorari denied,
59 S. Ct. 82, 305 U.S. 621, 83
L. Ed. 397.
Sherlock v. Greaves,
76 P. 2d 87, 106 Mont. 206.

B.

The court had jurisdiction over May W. Bentley in the former decree quieting title

We come now to the third point raised by plaintiffs; that is, that the court did not have jurisdiction over May W. Bentley in the former action. In commenting upon that proposition we desire first to say that counsel are attempting to attack collaterally a final judgment of a court of competent jurisdiction. Therefore, the rules as to collateral attack of a judgment must apply. The Supreme Court of Montana in the case of

West v. Capital Trust and Savings Bank,
113 Mont. 130, 124 P. 2d 572,

has stated the rule of collateral attack upon a judgment as follows:

> "The rule is well established that on such an attack there is a presumption of jurisdiction over the person of the defendant unless the contrary affirmatively appears from the judgment roll."
>
> (Citing cases.)
>
> "This elementary rule is so well settled in this state that outside authorities need not be resorted to. However, the rule is so aptly stated in 34 C.J. 537 that it is well to repeat it here. It is there said: 'In the case of a collateral

attack upon a domestic judgment of a court of general jurisdiction by a party thereto every reasonable presumption is indulged to support the judgment, and the burden is upon a party collaterally attacking a judgment to establish its invalidity. It will be presumed in such a case that the court had jurisdiction both of the subject matter and of the person, and that all the facts neccessary to give the court jurisdiction to render the particular judgment were duly found, except where the contrary affirmatively appears. These presumptions are indulged where the record, although failing to show jurisdiction affirmatively, yet does not distinctly show a want of jurisdiction, as where the record of a judgment of a court of general jurisdiction is silent as to the facts conferring jurisdiction, or is defective in consequence of the omission of proper recitals or the loss or absence of parts of the record.' "

Thus, for example, if the judgment roll showed service on all of the defendants but one, it would not be deemed an affirmative showing of lack of jurisdiction where the court's decree has found that it has jurisdiction over the person omitted. The only time that it would affirmatively appear from the judgment roll that the court did not have jurisdiction would be where the return recited service on all

defendants except one, specifically naming him. Our court in

Clinton v. Miller,
124 Mont. 463, at page 479,
226 P. 2d 487,

has expressly so held in the following language:

> " . . . it is not the 'return' or other evidence or proof of service which gives the court jurisdiction over the person of the defendant but it is **the fact of service** that confers such jurisdiction." (Emphasis theirs)

Here the court found that all parties were duly and legally served with summons. This established the fact of service, and since the record is not inconsistent with this finding, it cannot be collaterally attacked as attempted here.

We come now to a consideration of the sufficiency of the affidavit for publication of summons. It clearly meets the requirements of that portion of **Section 9482, Revised Codes of Montana, 1935,** which relates to service of summons by publication, "when any defendant specifically named in such complaint resides out of the state," in that the affidavit clearly shows that the defendant, May W. Bentley, resides out of the state.

This is apparent when we look at the affidavit and note therefrom that it states:

The defendants hreinafter named **last resided**

at: . . . May W. Bentley, **Madison, Wisconsin . . .**" (Emphasis supplied)

From this statement it clearly appears that the defendant resides out of the state, as it specifically states **where** she did reside. Had the affidavit merely stated that the defendant resided out of the state without any indication as to where she actually did reside, then the contention of the plaintiffs that a recitation of the facts upon which that conclusion was based would necessarily follow, but when, as here, the affidavit specifically states where she resides, such a recitation is unneccessary. We cite in support of this proposition the case relied upon by plaintiffs in their brief, which is

Aronow v. Anderson,
110 Mont. 484, 104 P. 2d 2.

In that case the affidavit recited the conclusion that the defendant resided out of the State of Montana, and that his last known residence was Shelby, Montana, not reciting the facts upon which the conclusion was based that he resided out of the state. Clearly the facts of this case and the one cited are materially different. It is to be noted that the court said in commenting on this situation:

> "The naked allegation that defendant resides out of the state, **without a statement as to where he does actually reside,** is not sufficient without a recitation of facts upon which the ultimate

> fact is based. This is particularly true in view of the fact, as here, that it is recited that Anderson's last known residence was Shelby, Montana, which negatives the idea that he was known to reside outside the State of Montana." (Emphasis supplied)

thereby definitely recognizing that had the affidavit contained "a statement as to where he does actually reside," as in this case, the affidavit would be sufficient.

We submit that this conclusively establishes the validity of the affidavit as a basis for the order of publication of summons.

DEFENSE OF ADVERSE POSSESSION

Plaintiffs at page 15 of their brief state that Rosebud County has abandoned its affirmative defense of adverse possession. It is to be noted from the answer of the defendant, Rosebud County, Montana, herein, (Tr. pp. 6-12), that the County did not plead the defense of adverse possession. Therefore, it can hardly be said that we have abandoned it.

LACHES

However, Rosebud County did plead in its answer the defense of laches. (Tr. pp 11-12). In asserting this defense, we are not unmindful that the question of laches depends upon the peculiar factual situ-

ation of each case and is not governed by any hard and fast rules. In our search of the reported cases we have failed to find any cases in the State of Montana that are squarely in point on the application of the doctrine of laches to bar a former owner in a tax title case. In this regard we might mention that at least one case is presently pending before the State Supreme Court on this very point and we anticipate that it will be decided prior to the hearing in this case. (Hentzy v. Mandan Loan & Investment Co., et al.)

However, we have been able to find various cases from other jurisdictions applying the doctrine of laches to bar a former owner in a tax title case.

Nohl v. Holloway,
66 P. 2d 497;

Buchanan v. Pitts,
111 F. 2d 599;

Holliday v. Mangels,
33 F. Supp. 471;

Aragon v. Empire Gold Mining & Milling Co.,
142 P. 2d 539;

Tayloe v. Kjaer,
171 F. 2d 343.

CONCLUSION

We do not urge the bar of laches in this case strenuously, as we do not think that a determination of this case depends upon any consideration of laches. It is submitted that the plaintiffs are effectively and forever barred from maintaining this action by, first, the voluntary dismissal of their complaint herein with prejudice as between plaintiffs and the defendants, Grebe and King; second, the tax title proceedings herein; and lastly, by the former action to quiet title. Therefore, we respectfully submit that the trial court's decision is correct and should be affirmed.

Respectfully submitted,
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